# Karisma Saujana Sdn Bhd v Albert a/l Antoni Tass

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S7–24–1568 OF 2007
AZMAN ABDULLAH JC
4 OCTOBER 2007

*Civil Procedure — Originating summons — Non-compliance — Whether failure a mere irregularity — Rules of the High Court 1980 O 1A & O 2*

*Legal Profession — Duty of care — Duty to opposite party — Preliminary objection — Objection on originating process — Failure to inform applicant's solicitor at least four days prior to its hearing — Whether objection was on the merits — Whether preliminary objection sustainable — Legal Profession Act 1976 s 57(a)*

The original proprietor of the land, Maril-Rionebel (M) Sdn Bhd ('Maril'), was wound up and an official receiver had been appointed as the provisional liquidator on behalf of them. The applicant herein purchased the said land via a sale and purchase agreement between the applicant and the official receiver on behalf of Maril. Pursuant to the terms of the sale and purchase agreement, the applicant deposited with the official receiver a bank guarantee issued by Bumiputra Commerce Bank Bhd. However, the execution of the agreement had been hindered due to the existence of private caveats lodged by one Raju Jayaraman Kerpaya on the said land. The applicant filed an originating summons seeking the removal of the private caveats. At the hearing of the application, the respondent's solicitor raised preliminary objections that the originating summons filed by the applicant herein was defective due to non-compliance of O 7 r 2(1) of the Rules of the High Court 1980 ('RHC'). Further, the applicant did not state the remedy for his application in his cause of action. The applicant contended that the respondent's solicitor had failed to inform them about his intention to raise the preliminary objections at least four days prior to its hearing. The applicant further submitted that the non-compliance with the requirements in the RHC should be regarded as a mere irregularity and should not nullify the proceedings nor any steps already taken in the said proceedings.

**Held**, allowing the application with costs:

(1) The court had a wide discretion to consider and decide whether a

non-compliance of the RHC is pardonable or correctable without the need to strike out or set-aside the particular originating summons (see para 23).

(2) It was not appropriate to strike out this originating summons only on the ground of non-compliance with RHC. In fact, the law makers and the courts have adopted the 'forgiving' approach prior to the enforcement of O 1A of the RHC (see para 29).

(3) The present originating summons was regular and had no defects in it. Even if there is non-compliance, apart from the provisions of O 1A of the RHC, in the interest of justice, pure objections on mere technicalities should only cautiously be entertained. The provisions of O 1A of the RHC are to ensure amongst others that the application, such as the present, be decided based on merits rather than on preliminary objections founded on mere irregularities not amounting to absolute nullity (see para 34).

**[Bahasa Malaysia summary**

Tuan punya tanah yang asal, Meril-Rionebel (M) Sdn Bhd ('Maril'), telah digulungkan dan pengawai penerima telah dilantik sebagai penyelesai sementara bagi pihak mereka. Pemohon di sini telah membeli tanah tersebut melalui satu perjanjian jual beli di antara pemohon dan pegawai penerima bagi pihak Maril. Menurut terma-terma perjanjian jual beli, pemohon telah mendeposit jaminan bank yang dikeluarkan oleh Bumiputra Commerce Bank Bhd kepada pegawai penerima. Tetapi, perlaksanaan perjanjian tersebut telah terhalang disebabkan kewujudan kaveat persendirian yang dimasukkan oleh seseorang yang bernama Raju Jayaraman Kerpaya ke atas tanah tersebut. Pemohon telah memfailkan saman pemula memohon untuk mengeluarkan kaveat persendirian tersebut. Ketika pendengaran permohonan tersebut, peguamcara responden telah membangkitkan bantahan awal bahawa saman pemula yang difailkan oleh pemohon di sini adalah cacat disebabkan ketidakpatuhan A 7 k 2(1) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Selanjutnya, pemohon tidak menyatakan remedi bagi permohonannya di dalam kausa tindakannya. Pemohon menegaskan bahawa peguamcara responden telah gagal untuk memberitahu mereka berkenaan dengan niatnya untuk membangkitkan bantahan awal sekurang-kurangnya empat hari sebelum pendengarannya. Pemohon turut menghujahkan bahawa ketidakpatuhan dengan syarat-syarat di dalam KMT seharusnya dianggap sebagai satu luar aturan sahaja dan sepatutnya tidak membatalkan prosiding atau mana-mana langkah yang telah diambil dalam prosiding tersebut.

**Diputuskan**, membenarkan permohonan dengan kos:

(1) Mahkamah mempunyai budi bicara yang luas untuk

A mempertimbangkan dan memutuskan sama ada ketidakpatuhan KMT adalah boleh dimaafkan atau boleh diperbetulkan tanpa perlu membatalkan atau mengenepikan saman pemula tersebut (lihat perenggan 23).

B (2) Adalah tidak sesuai untuk membatalkan saman pemula ini hanya atas alasan ketidakpatuhan dengan KMT. Sesungguhnya, pembuat undang-undang dan mahkamah telah menggunakan pendekatan 'pemaaf' sebelum penguatkuasaan A 1A KMT (lihat perenggan 29).

C (3) Saman pemula ini adalah mengikut aturan dan tiada kecacatan di dalamnya. Walaupun terdapat ketidakpatuhan, sebahagian daripada peruntukan A 1A KMT, dalam kepentingan keadilan, bantahan terhadap keteknikaan semata-mata seharusnya dilayan dengan berhati-hati. Peruntukan A 1A KMT adalah untuk memastikan antara
D lain bahawa permohonan, seperti permohonan ini, diputuskan berdasarkan merit daripada bantahan awal yang diasaskan di luar aturan semata-mata tidak menyebabkan pembatalan yang mutlak (lihat perenggan 34).]

E **Notes**

For cases on duty to opposite party, see 9 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1599–1601.

For cases on originating summons generally, see 2(3) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 4863–4923.
F

**Cases referred to**

*Ban Hin Lee Bank Bhd v Long Hua Corporation Sdn Bhd & Ors* [2000] 6 CLJ 1 (refd)

G *Bank of China v Ngan Ching Wen* [2005] 7 MLJ 28 (refd)

*Lai Yoke Ngan & Anor v Chin Teck Kwee & Anor* [1997] 2 MLJ 565 (refd)

*Megat Najmuddin bin Dato' Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd* [2002] 1 MLJ 385 (refd)

H *Metroinvest Anstalt & Ors v Commercial Union Assurance Co Plc* [1985] 2 All ER 318 (refd)

*Norwest Holdings Sdn Bhd v Muhibbah Engineering (M) Bhd* [2004] 4 MLJ 481 (refd)

*RHB Bank Bhd lwn Havana Club Sdn Bhd & lain-lain* [2005] 7 MLJ 506 (refd)
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*RHB Bank Bhd v Kawood Sdn Bhd & Ors and another suit* [2002] 2 CLJ 387 (refd)

*Saraswathy Devi a/p Nadchatiram v Vijayalakshimi Devi a/p Nadchatiram* [1998] 1 MLJ 89 (refd)

**Legislation referred to**

Companies Ordinance of Hong Kong s 290A
Legal Profession Act 1976 s 57(a)
Rules of the High Court 1980 O 1A, O 2 r 1(1), O 2 r 3, O 7 r 2(1), Forms 6, 7

*SL Lee (S Priya with him) (Badrul Lee & Associates) for the applicant.*
*Jegathesan (Jayaraman, Ong & Co) for the respondent.*

**Azman Abdullah JC:**

**[1]** In this action, the applicant seek to remove the private caveat registered by the respondent upon five pieces of land all located in Bandar Kuala Lumpur, District of Kuala Lumpur.

BACKGROUND

**[2]** The original proprietor of the lands was Maril-Rionebel (M) Sdn Bhd, which was wound up on 14 November 2000. The lands were charged to OCBC Bank (M) Bhd under two charges. After Maril-Rionebel been wound up, the official receiver from the Insolvency Department Malaysia had appointed as the provisional liquidator on behalf of Maril. The applicant herein purchased the said lands via a sale and purchase agreement dated 30 August 2005 between the applicant and the official receiver on behalf of Maril. The applicant was the highest bidder in a close tender offer with the purchase price of RM100,100,000. For this sale and purchase, the applicant has obtained approval from the Foreign Investment Committee ('FIC') on 21 November 2005. Following the said approval, pursuant to the term of the sale and purchase agreement, the applicant deposited to the official receiver a bank guarantee dated 21 December 2005, issued by Bumiputra Commerce Bank Bhd an amount of RM36,455,490.78. Later, a renewed bank guarantee dated 30 November 2006 issued by CIMB Bank was deposited to the official receiver.

**[3]** However, due to the private caveat lodged by Anafartalar Cadesi Sdn Bhd (a contributory shareholder) on 27 December 2004, and two private caveats thereafter lodged by Raju Jayaraman Kerpaya on 13 February 2006 and 22 March 2006 on the said lands, the sale and purchase was unable to be completed because the official receiver was unable to issue 'completion notice' to the applicant.

**[4]** Via a recent letter dated 29 May 2007, the official receiver extended the sale and purchase agreement to 30 November 2007 to enable the private

caveats lodged upon the land to be removed and 'completion notice' to be issued.

PRIVATE CAVEATS

**[5]** One Raju Jayaraman Kerpaya ('R Jayaraman') lodged two private caveats upon the said lands. The private caveats were lodged by R Jayaraman on 13 February 2006 ('Resp 1 caveat') and 22 March 2006 ('Resp 2 caveat'). The reason he lodged the said caveat is stated in Form 19B and statutory declaration. In the said statutory declaration, R Jayaraman stated that he was empowered by Siddennam Ltd to make the said admission. However, the applicant has made an official search about the company and found that the said company was incorporated in Hong Kong and its license has been revoked on 7 June 1996 pursuant to s 290A of the Companies Ordinance of Hong Kong (Cap 32).

**[6]** R Jayaraman was an ex-director of Maril-Rionebel and Anafatalar Caddesi Sdn Bhd. Anafartalar was a shareholder in Maril-Rionebel. Prior to lodging the two caveats, R Jayaraman had attempted to obstruct the execution of the said sale and purchase.

**[7]** The applicant submitted that the caveat lodged by Anafartalar on 27 December 2004 was a ruse by R Jayaraman and the reason in supporting the entry of the caveat was similar to the reason given by R Jayaraman at the time when he lodged his two caveats upon the said lands.

**[8]** Later the official receiver managed to obtain an order to remove Anafatalar's caveat via an action in KLHC S6–24–2395 of 2005 ('originating summons 1'). Thereafter, the official receiver once again made an application in KLHC via the S6–24–575 of 2006 ('originating summons 2') applying to remove R Jayaraman's first caveat ('Raju's caveat 1'). Pending the disposal of S6–24–575 of 2006 hearing, the respondent herein, that is the solicitor acting on behalf of R Jayaraman lodged the second private caveat upon the said lands on 22 March 2006 ('Raju's caveat 2'). The respondent was also the solicitor representing R Jayaraman in the originating summons 2 action. The respondent was acting on the instructions of R Jayaraman, and subsequently lodged a private caveat upon the said lands on 25 April 2007 ('respondent's caveat 3'). Among the reasons given by the respondent at the time of the entry of the respondent's caveat 3 was to prevent 'crime and fraud' by court officers.

**[9]** The applicant contended that the respondent has no interest upon the said lands and has no right which can be protected by the private caveat and the said caveat must be removed.

**[10]** At present, the sale and purchase agreement still exists, valid and able to be executed. However, its execution has been hindered due to the existence of Raju's caveat 1, Raju's caveat 2 and the respondent's caveat 3.

THE PRELIMINARY OBJECTIONS

**[11]** The originating summons has been fixed on 28 September 2007 before me. On this hearing date, the applicant's solicitor, that is Mr Lee, together with Ms S Priya were ready to submit for this originating summons, whereas the respondent which was represented by Mr Jegathesan informed the court that the respondent had received this originating summons on 14 September 2007 and served it to Mr Jayaraman that is the solicitor who was initially supposed to handle this case on behalf of the respondent. Mr Jayaraman was the sole proprietor of the firm of Jayaraman, Ong & Co. Nevertheless, Mr Jayaraman was unable to be present on this date because he was currently undergoing medical treatment in London. According to Mr Jegathesan, if the court wants to proceed with the hearing of the originating summons today (28 September 2007), therefore the respondent wants to raise preliminary objection on the ground that this originating summons is defective.

**[12]** What was interesting and important in this case was that according to the applicant's solicitor, the respondent himself was the solicitor who handled the entry of the caveats prior to this, and he was now entering this fourth caveat. In fact, Mr Jayaraman, the solicitor who was acting on behalf of the herein respondent, had lodged the second and the third caveat (Raju's caveat 1 and Raju's caveat 2) upon the said lands. The applicant's solicitor since the service of this originating summons, informed the respondent's solicitor that this was a clear cut case whereby through the decision of Justice Dato' Abdul Malik Ishak, the first caveat ('Anafatalar's caveat') has been removed and the honourable judge has prohibited Anafatalar to lodge any further private caveat upon the said lands.

**[13]** The respondent's solicitor raised preliminary objections that the originating summons filed by the applicant herein was defective because the applicant erroneously did not comply with the requirement of the Rules of the High Court 1980 ('RHC'). The respondent has referred to O 7 r 2(1) of the RHC whereby each originating summons which was to be filed shall follow the specified form and format and proper with the need of the applicant and the relief seek for r 2 outlines three type of forms for originating summons. That is Form 6 for originating summons where appearance of the defendant is required to be filed, Form 7 for originating summons where appearance of the defendant is not required, or Form 8 for an ex parte originating summons.

**[14]** The applicant in this action used Form 7 of the originating summons whereby an appearance of the defendant is not required and accordingly the applicant had served this summons to the respondent on 14 September 2007. The respondent submitted that Form 6 of the originating summons is more appropriate format because according to the respondent there are a lot of issues and matters to be raised and challenged and it is thereby a contested matter. Hence it was further submitted by the respondent has to be given the chance to file the affidavit in reply to this applicant's application. Thus, the respondent submitted that the usage of format and Form 7 by the applicant herein was a non-compliance with the requirement in the RHC and this originating summons should be struck out based on the said reasons above mentioned. Unfortunately the respondent has not filed any affidavit to oppose this originating summons despite the hearing date of the originating summons being fixed and the respondent having full knowledge of this date.

**[15]** The respondent also submitted that there was another non-compliance in the applicant's originating summons, that is the applicant did not state in his cause of action prior to applying, the remedy relief for his application. The respondent applied the case of *Saraswathy Devi a/p Nadchatiram v Vijayalakshimi Devi a/p Nadchatiram* [1998] 1 MLJ 89, and emphasised that this originating summons is certainly wrong in respect of its legality and technicality.

**[16]** Therefore in essence the respondent objected to the originating process initiated by the applicant arguing that the applicant's filling, format and relief prayed for in the originating summons are defective in one way or the other.

THE APPLICANT'S REPLY TO THE PRELIMINARY OBJECTIONS

**[17]** The applicant submitted that, if the respondent's solicitor wanted to raise preliminary objections, he was supposed to serve a written notice or to call at least four days before he wants to raise the preliminary objections to the applicant's solicitor. Here, the respondent's solicitor was ready with the authorities to support his preliminary objections, but the applicant's solicitor was not ready with any authorities in order to reply to respondent's submissions herein. As for the issuance of the notice, I have referred to Bar Council's Rules made in accordance with s 57(a) of the Legal Profession Act 1976, under BCR 03/2001 which outlined that if a preliminary objection is to be raised, a notice has to be served to the other party at least four days prior to its hearing. Nevertheless, the respondent's solicitor herein has failed to inform the applicant's solicitor about his intentions to raise these preliminary objections. This preliminary notice is only a matter of good practice and it is formulated as not to cause a surprise to the applicant's solicitor on the hearing

date of this originating summons. In this case, I believed indeed the applicant's solicitor is taken aback by the preliminary objections which were only made known at the eleventh hour. A

**[18]** The applicant subsequently referred O 7 r 2(1) whereby this order provided appropriate forms for the use of originating summons and reliefs seek in court. According to the applicant, Form 7 is the most suitable format for reliefs and remedies prayed herein, that is to remove private caveats. B

**[19]** In fact the originating summons herein has clearly stated the reliefs prayed and the grounds of application are also stated from paras (a) until (d) among others, the respondent has no caveatable interest upon the said lands. C

**[20]** The applicant also referred O 2 r 1(1) of the RHC which provides that the failure to comply with the requirements in the RHC, is a failure is to be counted as an irregularity, and it does not nullify the proceedings, nor does it nullify any steps already taken in the proceedings, or any documents, orders or judgments in it. In fact, the court has no discretion to set aside any proceedings of this originating summons herein, on the sole ground that it does not comply with the requirements in the RHC. D E

THE LAW

**[21]** It is convenient for me to deal first with the provisions of the law that applicable to the above contentions. I am called to refer to O 2 r 3 of the RHC which reads: F

> 3 Preliminary objection for non-compliance of rules not allowed (Order 2 r 3).
>
> A court or judge shall not allow any preliminary objection by any party to any cause or matter or proceedings, only; on the ground of non-compliance of any of these Rules unless the Court or judge is of the opinion that such non-compliance has occasioned a substantial miscarriage of justice. G

**[22]** The court is supposed to have regard to the justice of the particular case overall, prior to exercising its discretions to set aside an originating summons. This is in accordance with O 1A of the RHC which provides: H

> In administering any of the rules herein the court or a judge shall have regard to the justice of a particular case and not only in the technical non-compliance of any of the rules herein. I

**[23]** I would like to emphasise again, the court has wide discretions to consider and decide whether a non-compliance of the RHC is pardoned or

corrected whilst in the said proceedings without the need to strike out or set aside the particular originating summons. This is in accordance with O 2 r 1(1) of the RHC which provides:

> Where, in the beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

**[24]** This issue has been greatly discussed by the courts, among others in the case of *Megat Najmuddin bin Dato' Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd* [2002] 1 MLJ 385 whereby the Federal Court has clearly emphasised that a judge is not supposed to so strictly follow rules at the expense that justice and impartiality of a particular case is reduced due to its obsessions for the technicality of the rules of the said laws. Futhermore, the Federal Court in the case of *Lai Yoke Ngan & Anor v Chin Teck Kwee & Anor* [1997] 2 MLJ 565 has outlined at length about the matter as follows:

> The proper approach is for a court to accept that a breach of a rule of court renders the particular proceeding irregular with a power in the court to excuse the non-compliance. That power, as in all matters calling for crucial discretion, is to be exercised judicially having regard to the substantial merits of a case and having particular regard to the interests of justice. Thus, for example, to say that a judgment entered for too much is automatically bad or is automatically curable is to take an extreme position that is unsustainable in law. Such a judgment may be set aside if to cure it by amendment would do greater injustice to the particular defendant. On the other hand, such a judgment may be cured by amendment if not to do thus would result in greater injustice to the particular Plaintiff. Ultimately, it is the objective perception of a court as to where the justice in a particular case lies that determines whether the irregularity should be cured. If the court decides the particular case to be unfit for the exercise of the curative power, then it may set aside the judgment, order or other proceeding.

**[25]** In my judgment, the correct position is that stated by Cumming-Bruce LJ in *Metroinvest Anstalt & Ors v Commercial Union Assurance Co Plc* [1985] 2 All ER 318 at p 323 which I quote:

> As I construe O 2 r 1 from the moment a step in proceedings is tainted by irregularity through failure to comply with the rules, the irregular step or document remains irregular inter partes until the matter has been brought before the court and the court has decided in which way to exercise the jurisdiction conferred by O 2 r 1(2). Order 2 r 2 does not restrict the power of the court in the sense of restricting its jurisdiction, and does not have the effect of suspending the irregularity until the application under O 2 r 2 is made. The purpose and effect

of O 2 r 2 is to prescribe the procedure if an when an opposite party decides to apply so that the court on recognizing the irregularity, may exercise its power under r 1(2) by taking the action of killing or curing the irregular proceeding.

**[26]** The decision in the said *Lai Yoke Ngan*'s case has been referred and followed in another case. Among others *RHB Bank Bhd v Kawood Sdn Bhd & Ors and another suit* [2002] 2 CLJ 387 where Clement Skinner J was of the opinion:

> With regard to the submission that an irregularity can only be cured if the party in breach has applied to do so and has placed before the court sufficient material to enable it to exercise the discretion vested in it, my reading of O 2 r 1 does not indicate any such fetter on the court's discretion. While there is nothing to prevent a party in breach from applying to cure an irregularity, I do not think that the absence of such application prevents the court from exercising its jurisdiction under O 2 r 1 as the court may exercise that power on the facts, materials and circumstances revealed in each case when an application to strike out the particular proceeding is made to the court by the party complaining about such irregularity under O 2 r 2 such as here. In this regard, I refer to the last part of the passage of the judgment of Cumming-Bruce LJ in *Metroinvest Anstalt & Ors v Commercial Union Assurance Co Plc* already quoted above where His Lordship said 'The purpose and effect of O 2 r 2 is to prescribe the procedure if an when an opposite party decides to apply so that the court on recognising the irregularity, may exercise its power under r 1(2) by taking the action of killing or curing the irregular proceeding.
>
> Once the application is before the court, the discretion vested in the court is exercised on the lines described by the learned judges in *Lai Yoke Ngan*'s case, which I have set out above. In the words of Mohammed Azmi FCJ, the discretion must be exercised in a way which all the circumstances best reflects the requirements of justice.

**[27]** Also in another case that is *Ban Hin Lee Bank Bhd v Long Hua Corporation Sdn Bhd & Ors* [2000] 6 CLJ 1 the High Court took the similar approach as the above cases. In the said case, Sulong Matjeraie J decided that:

> The failure of the respondent to state the amount at the indorsement of claim column was only a mere irregularity. The fact that O 2 of the RHC had done away with the distinction between an irregularity and nullity, all acts and omissions that amount to non-compliance with one or more of the RHC result in being curable irregularities.

**[28]** I also would like to quote the original text in Bahasa Malaysia the observations of Justice Ramli Ali in the case of *RHB Bank Bhd lwn Havana Club Sdn Bhd dan lain-lain* [2005] 7 MLJ 506 who summarised as follows:

Ketiga-tiga kes yang dirujuk di atas telah diputuskan sebelum berkuatkuasanya A 1A KKMT 1980. Nampaknya sebelum wujudnya A 1A, mahkamah-mahkamah di Malaysia telah pun mengambil pendekatan yang lebih 'memaafkan' sesuatu kesilapan teknikal di dalam prosedur mahkamah terutamanya di dalam KKMT 1980 dikuatkuasakan. Ini menunjukkan pihak pembuat undang-undang dan juga mahkamah-mahkamah sememangnya berkehendakkan agar pendekatan sedemikian diambil dan dilaksanakan oleh mahkamah-mahkamah. Dalam hal ini, mahkamah ini juga berpendapat dan memutuskan bahawa pendekatan sedemikian patut dilaksanakan di dalam kes ini.

**[29]** Therefore it is clear that the law makers and the courts have adopted the 'forgiving' approach prior to the enforcement of O 1A. As such, in my view it is not appropriate for me to strike out this originating summons only on the ground of non-compliance with RHC and I am of the opinion that this originating summons is regular and has no defects in it.

**[30]** Other than that, after considering the case referred by the respondent in this preliminary objections that is *Saraswathy Devi a/p Nadchatiram v Vijayalakshimi Devi a/p Nadchatiram* [1998] 1 MLJ 89, I find in comparison to this case which was decided in 1998, a more recent case and certainly that binds the courts below. This is the case of *Megat Najmuddin bin Dato' Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd*, in which I have already highlighted the salient principles of this decision in the earlier part of this written judgment.

**[31]** On the other hand, I find in the case of *Bank of China v Ngan Ching Wen* [2005] 7 MLJ 28 where Justice Abdul Wahab Said Ahmad referred to O 1A of the RHC and treated the preliminary objections raised by the defendant which has not complied with the procedure laid down in s 57(a) of the Legal Profession Act 1976 as an objection not on the merits and need not be pondered on.

**[32]** I am also guided by the case of *Norwest Holdings Sdn Bhd v Muhibbah Engineering (M) Bhd* [2004] 4 MLJ 481. In this case too, the objection was on the timing of an application to strike out an action was then dismissed by the court in view of O 1A of the RHC.

THE COURT'S FINDINGS

**[33]** I could not accede to the arguments of the respondent as having perused the originating summons, I find the same to be proper and in this regard the format used is similar to what is required by the RHC.

**[34]** Even if there is non-compliance and I find none here, I reiterate the provisions of O 1A of the RHC and reaffirm that in the interest of justice, pure objections on mere technicalities should only cautiously be entertained. The provisions of O 1A of the RHC is to ensure amongst others that application like this be decided based on merits rather that preliminary objections founded on mere irregularities not amounting to absolute nullity.

THE DECISION OF THE COURT

**[35]** After hearing submissions from both parties on the preliminary issues which was raised by the respondent, and based on the grounds above mentioned, I dismiss with costs the respondent's preliminary objections.

**[36]** After I gave the decision regarding the preliminary objections, the respondent's solicitor sought my permission to be excused from my chamber and he is not going to submit on merits for the originating summons in this encl 1. The respondent's solicitor explained that he has not received further instructions from the client to submit on encl 1. As such, the applicant's solicitor submitted for encl 1 without the presence of the respondent's solicitor, or the respondent himself. Thereafter I fixed 4 October 2007 as the decision date for this originating summons. On 4 October 2007, based on the above mentioned circumstances, I accordingly gave judgment on the originating summons based on arguments pertaining to the merits of the same. Hence, I allow the applicant's application in encl 1 with costs.

*Application allowed with costs.*

Reported by Ashgar Ali Ali Mohamed